IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1970

UNITED STATES OF AMERICA, *Petitioner*

v.

THE DISTRICT COURT IN AND FOR WATER DIVISION NO. 5, STATE OF COLORADO; AND THE JUDGE THEREOF, THE HONORABLE CLIFFORD H. DARROW, AND THE WATER REFEREE THEREOF

On Writ of Certiorari to the Supreme Court of the State of Colorado

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BRIEF OF RESPONDENT COURT AND THE COLORADO RIVER WATER CONSERVATION DISTRICT

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INDEX

	Page
Opinions Below	1
Statutes Involved	2
Questions Presented	5
Statement	6
Summary of Argument	9
Argument	11
The Clear Jurisdiction of State Courts Under 43 U.S.C. 666 To Adjudicate Claims of the United States, Whether Labeled Appropriative or Reserved, May Not Be Ousted Either on Speculation That Those Rights Will Not Be Recognized or That State Processes Will Not Accommodate Them	11
Conclusion	19

CITATIONS

CASES:

California-Oregon Power Co. v. Beaver Portland Cement Co., 295 U.S. 142 (1935) 17

Dugan v. Rank, 372 U.S. 609 (1963) 17

Pacific Live Stock Co. v. Oregon Water Bd., 241 U.S. 440 (1916) 16, 17

United States v. The District Court in and for the County of Eagle and State of Colorado, No. 87, O.T. 1970, *certiorari granted*, 397 U.S. 1005 ..*in passim*

Page

STATUTES:

Act of July 10, 1952, 66 Stat. 560, 43 U.S.C. 666 ..*in passim*

Colo. Rev. Stat. (1963), *as amended* (1969) .... *in passim*

148-21-3 3
148-21-8 6
148-21-17 4
148-21-18 6
148-21-20 ..... 4, 17
148-21-27 18
148-21-28 18
150-7-1 7

Fed. R. Civ. P. 4 (d)(4) 6

MISCELLANEOUS:

Hearings on S. 18 Before a Subcommittee of the Senate Committee on the Judiciary, 82d Cong., 1st Sess., (1951) 15

S. Rep. No. 755, 82d Cong., 1st Sess. (1951) 17

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 812

UNITED STATES OF AMERICA, *Petitioner*

v.

THE DISTRICT COURT IN AND FOR WATER DIVISION NO. 5, STATE OF COLORADO, AND THE JUDGE THEREOF, THE HONORABLE CLIFFORD H. DARROW, AND THE WATER REFEREE THEREOF

On Writ of Certiorari to the Supreme Court of the State of Colorado

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BRIEF OF RESPONDENT COURT AND THE COLORADO RIVER WATER CONSERVATION DISTRICT

OPINIONS BELOW

The opinion and order of the respondent court (unreported) appear in the Appendix at pp. 6-9. The order, without opinion, of the Supreme Court of Colorado denying application for a writ of prohibition appears in the Appendix at p. 27. The opinion of the

Supreme Court of Colorado in No. 87 is reported at 458 P.2d 760 and is reprinted at App. No. 87, 19-44.[1]

STATUTES INVOLVED

The Act of July 10, 1952, 66 Stat. 560, 43 U.S.C. 666 provides as follows:

Suits for adjudication of water rights

(a) *Joinder of United States as defendant; costs.*

Consent is given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner of or is in the process of acquiring water rights by appropriation under State law, by purchase, by exchange, or otherwise, and the United States is a necessary party to such suit. The United States, when a party to any such suit, shall (1) be deemed to have waived any right to plead that the State laws are inapplicable or that the United States is not amenable thereto by reason of its sovereignty, and (2) shall be subject to the judgments, orders, and decrees of the court having jurisdiction, and may obtain review thereof, in the same manner and to the same extent as a private individual under like circumstances: *Provided,* That no judgment for costs shall be entered against the United States in any such suit.

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[1] Throughout this brief, in referring to the briefs and appendix in No. 87 we shall use "Br. No. 87" and "App. No. 87". Where the references are to the appendix or the Government's brief in this case (No. 812) we shall use only "App." or "Br.".

(b) *Service of summons.*

Summons or other process in any such suit shall be served upon the Attorney General or his designated representative.

(c) *Joinder in suits involving use of interstate streams by State.*

Nothing in this section shall be construed as authorizing the joinder of the United States in any suit or controversy in the Supreme Court of the United States involving the right of States to the use of the water of any interstate stream.

In addition to those portions of the Water Right Determination and Administration Act of 1969[2] (1969 Act) quoted by the United States, the following portions thereof are deemed pertinent:

> 148-21-3. Definition.—(1) For the purposes of this article, unless the context clearly indicates a different meaning:
>
> * * * *
>
> (8) "Water right" means a right to use in accordance with its priority a certain portion of the waters of the state by reason of the appropriation of the same.
>
> * * * *
>
> (10) "Priority" means the seniority by date as of which a water right is entitled to divert or conditional water right will be entitled to divert and the relative seniority of a water right or a conditional water right in relation to other water rights and conditional water rights deriving their supply from a common source.
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> * * * *

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[2] Colo. Rev. Stat. (1963), as amended, 11 Colo. Rev. Stat. §§ 148-21-1 to 45 (1969 Perm. Supp.), as amended, Colo. Sess. L. ch. 103, 430 (1970), hereinafter cited Colo. Rev. Stat. and by reference to the specific section.

(13) "Abandonment of a water right" means the termination of a water right in whole or in part as a result of the intent of the owner thereof to discontinue permanently the use of all or part of the water available thereunder.

* * * *

148-21-17. Administration and distribution of waters.—(1) The state engineer shall be responsible for the administration and distribution of the waters of the state, and in each division such administration and distribution shall be accomplished through the offices of the division engineer as specified in this article.

(3) In the distribution of water, the division engineer in each division and the state engineer shall be governed by the priorities for water rights and conditional water rights established by adjudication decrees entered in proceedings concluded or pending on the effective date of this article and by the priorities for water rights and conditional water rights determined pursuant to the provisions of this article. All such priorities shall take precedence in their appropriate order over other diversions of water of the state.

* * * *

148-21-20. Proceedings by the water judge.—(1) On . . . the first Tuesday of April and October in division 5 . . . the water judge for the . . . division shall commence hearings with respect to the subject matter of protests filed and orders of rereferral entered by the referee during the preceding six calendar months. Such matters shall generally be considered by the water judge in chronological order, however, the dates and times of hearings shall be adjusted by the water judge at his discretion for the convenience of persons involved or for other reasonable cause.

* * * *

(5) A decision of the water judge with respect to a protested ruling of the referee shall either confirm, modify, reverse or reverse and remand such ruling, and in the case of the modification of a ruling the decision may grant a different priority than that granted by the referee and may specify its own terms and conditions with respect to a change of water right or plan for augmentation. A decision of the water judge in regard to a matter which has been rereferred by the referee shall dispose fully of such matter and may contain such provisions as the water judge deems appropriate. The water judge shall confirm and approve as part of his judgment and decree a ruling of the referee with respect to which no protest was filed, provided that the water judge may reverse or reverse and remand any such ruling which he deems to be contrary to law.

(9) Appellate review shall be allowed to the judgment and decree, or any part thereof, as in other civil actions, but no appellate review shall be allowed with respect to that part of the judgment or decree which confirms a ruling with respect to which no protest was filed.

QUESTIONS PRESENTED[3]

(1) Whether under 43 U.S.C. 666, a State court in adjudicating water rights under State law can obtain jurisdiction over the United States.

(2) Whether, upon joinder of the United States pursuant to 43 U.S.C. 666, the United States must present all of the water rights it owns or claims, including those it may claim as reserved rights, for adjudication with the claims of others.

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[3] These are identical with those presented at p. 2 of our brief in No. 87, as are the Government's questions in both cases, for all practical purposes.

STATEMENT

This case raises in our view the identical questions, stated just above, as posed in *United States* v. *The District Court in and for the County of Eagle and State of Colorado, et al.*, No. 87, this term (hereinafter No. 87). There are, of course, certain factual differences which we treat in this statement, but the same basic issue of state court jurisdiction is presented in both cases.

This case commenced, as did No. 87, by service of a notice in conformity with 43 U.S.C. 666 (b)[4] upon the Attorney General of the United States. As a consequence of the Water Right Determination and Administration Act of 1969 (1969 Act), the notice was issued[5] by the District Court for Water Division 5, just as the notice in the proceedings now here as No. 87 was issued by the District Court for Eagle County. Under the 1969 Act, the District Court for Water Division 5 was given responsibility for water rights determinations[6] affecting ". . . all lands in the State of Colorado in the drainage basins of the Colorado River and all of its tributaries arising in Colorado, with the exception of the Gunnison River; . . .".[7] This by definition in-

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[4] The requirements of Fed. R. Civ. P. 4 (d) (4) were also observed.

[5] Other statutory requirements of notice were satisfied such as publication in newspapers published in each county in Water Division 5 and by mailings to affected persons, including those having specifically requested notice. Colo. Rev. Stat. § 148-21-18(3).

[6] The word "determination" is used in the 1969 Act and includes "adjudication" as used in previous acts.

[7] Colo. Rev. Stat. § 148-21-8(6). It is important to note that Water Division 5 is for all practical purposes identical with what was formerly designated Irrigation Division 5 under the former law. That prior law provided seven such Irrigation Divisions for water rights administration purposes just as there are now seven Water Divisions for like purposes.

cludes the area of the Eagle River system involved in No. 87, as well as an additional geographic area all within the confines of the Colorado River Water Conservation District.[8] The District has numerous claims to the use of water in its geographic area in furtherance of its statutory responsibilities and it was in this connection that the District appeared in the respondent court, just as it did in the respondent court in No. 87.

The notice served upon the Attorney General in this case advised that "[y]ou are further notified that you have until the last day of March, 1970, to file with the water clerk a verified statement of opposition to any such applications . . ." In response, on March 31, 1970, the Government filed a motion with the respondent court to quash service as to it on the principal ground that the United States had not consented to suit. This motion was opposed by the District. After briefing and oral argument the respondent court held that the rationale of the Colorado Supreme Court on state court jurisdiction in the case here as No. 87 was equally applicable to proceedings under the 1969 Act, adding:

> . . . Perhaps to greater degree, because the jurisdiction of the Court for Water Division No. 5 extends to a much larger area than the former water district which is involved in the case on certiorari and which is now included within Water Division No. 5. (App. 8).

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[8] The District is a public agency of the State of Colorado embracing a 15 county area, established for the purpose of developing and conserving the waters of the Colorado River and its tributaries within the area of the District. Colo. Rev. Stat. (1963) § 150-7-1. Part or all of 8 of those counties are within the jurisdiction of the District Court for Water Division 5.

While thus overruling the motion to quash, the respondent court noted it would entertain, ". . . where appropriate, applications by the United States for reasonable extensions of time." (App. 9).

Following this, the United States filed with the respondent court a "Motion for Extension of Time to File Statements in Opposition or Other Response." The reference to "Statements in Opposition" clearly recognized the language of the notice that such statements should be filed by a day certain, and in support of more time the United States advised the respondent court:

> (2) The United States is in the process of gathering a catalog of its multitude of water rights within Water Division 5, but the cataloging procedure will not be completed in the immediate future. Therefore, the United States is unable at this time to determine the effect of the Water Right Applications filed upon its water rights. Hence, additional time is needed for the United States to physically gather the information needed to form a response.

But rather than selecting a time by which the catalog referred to would be available and within which the United States would respond, the motion suggested an extension until No. 87 had been disposed of here. The respondent court denied this motion.

The United States then applied to the Supreme Court of Colorado for a writ of prohibition. This application was not a request for a stay of the proceedings in the respondent court. Instead it asked in virtually the identical terms in which prohibition had been sought in the case now here as No. 87, that the writ issue to the respondent court "for the reason that

said Court and Judge are wholly without jurisdiction over the United States." (App. 2).

The Colorado Supreme Court had already decided precisely the opposite in the *Eagle County* case (No. 87) and thus promptly denied, *en banc*, the writ applied for (App. 27). The United States then filed here for certiorari and, just as in No. 87, we supported the application for the writ because of the importance of a decision now on the same basic question of jurisdiction which both cases present.[9]

SUMMARY OF ARGUMENT

The jurisdictional issue, which is all this Court need decide to dispose of both cases, was offered in sharp focus by the United States when it came here seeking certiorari in No. 87. There, after admitting the decision below did not terminate the entire litigation, to assure the Court there was finality of judgment below permitting review, the Government noted:

> ". . . Since [the jurisdictional] issue is *clearly separable* from the merits of the litigation pending in the State district court (the relative rights and priorities of the claimants of water rights in Water District 37), and is not subject to further review in the Colorado courts, the judgment is

[9] In conferences among counsel while the petition for certiorari was pending in No. 812 there was mutual recognition of the desirability for ongoing proceedings on water matters in the respondent court in the interests of the proper administration of the 1969 Act and, at the same time, of the effect that the various deadlines in that Act could have upon any rights of the United States in its absence. This led to an unopposed request for a stay by this Court, which stay has been implemented by agreement among counsel on the language to be inserted in decrees which will hold the rights of the United States in status quo pending the decision of this Court.

> final for purposes of this Court's jurisdiction...." (Pet. in No. 87, then No. 1178, Oct. Term, 1969 at 9, emphasis added).

This "clearly separable" issue, as stated by the United States was whether:

> . . . the Colorado district court has jurisdiction under a federal statute to adjudicate the water rights of the United States, including its reserved rights." (id.)

We have twice supported review on this issue because it is clearly in the interests of all concerned that it be answered now and not left for argument after the expense of trial on the merits.

But having brought the issue here so clearly the Government continues to blur it here by two contentions. The first of these—totally speculative—may be paraphrased thusly: It is "highly unlikely" that the state district courts would recognize federal reserved rights; even if they did, the adjudication of such rights in state court proceedings "would open the way for an attempt to adjudicate reserved rights out of existence"; and accordingly Congress could not have intended "to jeopardize" reserved rights by subjecting them to state adjudications (Br. 7-10). As we show below, this speculation not only reaches out for problems that are simply not here, but leads the Government to a rationalization of what Congress intended in enacting 43 U.S.C. 666 that is plainly at odds with the legislative history.

A second area of blurring is in connection with the procedures under state law. In this area we are told that neither the procedures in No. 87 nor in No. 812 provide for the type of adjudication proceedings con-

templated by 43 U.S.C. 666. But as we hereinafter show not only is the United States in error in the details it pursues, but again misconceives the thrust of 43 U.S.C. 666, which was to waive immunity in water rights adjudications despite the clearly understood differences in procedures in the states.

ARGUMENT

The Clear Jurisdiction of State Courts Under 43 U.S.C. 666 To Adjudicate Claims of the United States, Whether Labeled Appropriative or Reserved, May Not Be Ousted Either on Speculation That Those Rights Will Not Be Recognized or That State Processes Will Not Accommodate Them

The threshold error of the Government's position may be demonstrated in our view, from the following statement in its brief in No. 812, as follows (at 6-7):

> As in former Water District 37, the United States claims two types of rights in the larger Water Division No. 5: *appropriative* rights acquired pursuant to state law, and *reserved* and other rights based on federal law. . .

As to the appropriative rights, the Government concedes there is state court jurisdiction under 43 U.S.C. 666 (Br. No. 87, 5) and thus any claims so labeled *must* be advanced in the Water Division 5 proceedings.[10] We know the nature of most if not all of the

[10] In fact, the U.S. Forest Service made two such claims in Water Division 5 in March, 1970. The notice and resume published for March, 1970, by the Water Clerk in the District Court in and for Water Division No. 5 included the following:

4. Case No. W-30, U.S. FOREST SERVICE-WHITE RIVER NATIONAL FOREST, P.O. Box 948, Glenwood Springs, Colorado, 81601, CAMP HALE PASTURE DITCH, the Southeast Corner of Section 23, Township 7 South, Range 80 West of the Sixth Principal Meridian, bears South 46° 11′ E., 1880 feet; decree for 1.02

claims involved in No. 87 because the Government set them forth with particularity during the proceedings in the respondent court in that case.[11] Those claims would, of course, fall within what is now Water Division 5, and at least those labeled *appropriative* would be subject to determination by the respondent court in this case quite apart from any other claims which the United States should advance from the catalog which it told respondent court it was preparing.

As the holder of such claims to *appropriative* rights the Government is clearly a necessary party in the respondent court under 43 U.S.C. 666, for without its presence there could not be a complete adjudication of claims based on state law. But, just as clearly, if the Government is allowed to withhold some of its claims on the mere distinction of being *reserved* and not *appropriative,* there still would be an incomplete and thus meaningless adjudication. As we show in some detail in our brief in No. 87 (11-29), Congress enacted 43 U.S.C. 666 to obviate, not perpetuate, this result.

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cubic feet per second, with priority date of September, 1969, for irrigation purposes.

5. Case No. W-31, U.S. FOREST SERVICE-WHITE RIVER NATIONAL FOREST, P.O. Box 948, Glenwood Springs, Colorado, 81601, CAMP HALE POND, located in Section 9, T. 7S., R 80W., Sixth Principal Meridian; decree for 37.51 acre feet, with priority date of October, 1968, for Fish and Wildlife.

[11] App. No. 87, 6-9. The United States agrees that there is a misprint in this Appendix at p. 8 in the last sentence of paragraph (1). Instead of 954 c.f.s. the figure should be .954 c.f.s., so that the sentence should read: "Forseeable uses amount to .954 c.f.s. and 420.7 acre feet". The c.f.s. (cubic feet of water per second) measures a daily rate of flow. An acre foot is a measure of volume of water—one acre-foot covers one acre of land one foot deep.

The motion to dismiss in the respondent court in No. 87 and the motion to quash in the respondent court in this case both sought to extricate the United States from advancing *any* claims, however they might be labeled, yet there can be no question as to state court jurisdiction over those rights depicted as *appropriative*. At least to this extent, then, the Government cannot be upheld here. As far as *reserved* rights are concerned, the genius of the appropriation system is that such rights can be integrated with other rights once they are articulated as the Government has done in No. 87 and claims to be doing in No. 812. There is thus little if any distinction in the labels used. Indeed, as the United States advised the Colorado Supreme Court in seeking prohibition in No. 87, if that court:

> . . . were to hold that the United States could adjudicate all of its rights in proceedings such as this and obtain the true priority date of its reserved and appropriative rights, most of the objections of the United States to these adjudications would be removed. While the United States could not, even then be joined as a defendant under 43 U.S.C. sec. 666, for the reason that an entire river system would not be involved, the United States would be assured it could have its rights properly adjudicated if it chose to appear as plaintiff in a Colorado Water District adjudication . . . (App. No. 87, 14).[12]

The United States speculates that the Colorado courts will not recognize its reserved rights, or, recog-

[12] It should be noted here that the alleged lack of "an entire river system" as the only objection raised to state court jurisdiction is now said by the United States to be a "defect [which] has been mitigated" by the 1969 Act (Br. 11, n. 4).

nizing them, will be "highly unlikely" to accord them the priority date to which they are entitled because of a provision of the 1969 Act subordinating priorities accorded thereunder to those previously entered (Br. 10). This assumption ignores the fact that this provision in the new statute is identical in effect to the previous statute which the United States acknowledges the Supreme Court of Colorado rejected as barring the right of the United States to its true priority date (Br. 9). This assumption also ignores the statement of the respondent court: "We are bound by and must follow . . . the rule of decision of the highest Court of this state. . ." (App. 9).

Nevertheless, the United States expresses fear that to submit its reserved rights to state court proceedings "would open the way for an attempt to adjudicate reserved rights out of existence." (Br. 9). The short answer to this is that it is just more speculation. Moreover, even though the United States has not submitted any rights for adjudication, the Colorado Supreme Court has already held:

> . . . whatever rights the United States has to water can be recognized and adjudicated by our district courts just as adequately as in any other forum—and perhaps more adequately. Therefore, it would seem that no adequate reason exists to withhold reserved rights from the light of day and adjudication. (App. No. 87, 42-43).

We pass now to the procedural concerns imagined by the United States. At the outset, when Congress was considering the waiver in what became 43 U.S.C. 666, it was well aware state adjudicatory laws varied widely in procedure. Nothing exemplifies this more than the testimony of the Special Assistant to the At-

torney General in testifying at the hearings on S. 18. He said:

> You have a general waiver of immunity for every water right in the United States. You not only have a waiver of immunity, you subject us to the administration of every State. We would be forced—I went back and checked this when I got through with my last conversation with you—we would be forced to have 17 different procedures west of the one hundredth meridian in which to try our litigation.[13]

In full cognizance of such procedural differences, Congress nevertheless granted the waiver of immunity.

The effort to magnify procedural differences which allegedly exist between the 1969 Act and the previous law should be contrasted with what the United States said as between these two Colorado water rights procedures when applying for prohibition in what is now No. 87. As the court below noted (App. No. 87, 44), the United States filed with it a supplemental brief on the subject of the effect of the 1969 Act upon the questions involved. This supplemental brief advised that "upon careful review" of the 1969 Act the Government was of the opinion that its position below was "not affected in any significant way". (Record in No. 87, at R. 152). Indeed, the court below itself concluded the provisions of the 1969 Act to be ". . . immaterial to the jurisdictional question presented." (App. No. 87, 22).

The 1969 Act represents a streamlining of the adjudicatory procedures whereby Colorado has substituted a

[13] Hearings on S. 18 before a Subcommittee of the Senate Committee on the Judiciary, 82d Cong., 1st Sess., at 14 (1951).

basin-wide division concept for the previous smaller district concept and has freed, in some measure, the adjudicating court from the tedium of investigating claims, leaving this to a court-appointed referee. Nevertheless, all actions of the referee, and any protests and oppositions filed with regard to claims, go to the court for judicial disposition. While the United States in its petition in this case downgrades the referee function calling it "extremely limited" and "administrative rather than judicial," (Pet. 7), the fact is that referee proceedings were provided for in the prior law, similarly under the supervision of the court. Though appearing to the Government to effect many "procedural" changes, the 1969 Act in fact simply draws from the previous adjudication procedures and case law relating thereto.

In dealing with the 1969 Act in its brief here the United States says with regard to the resume ". . . in response to this notice the United States is neither asked nor permittted to submit its claims." (Br. 13). This is simply incorrect. Pursuant to the notice, all having claims within the Division are thereby on notice that if they do not file a statement of opposition or state any unadjudicated claims of their own by way of application, those objections or claims will be foreclosed as the process unfolds.[14] While the statute does

[14] This was true of every water right claimant under the previous law. It applies as well under any state system of adjudication known to respondents and the necessity therefor was well known to Congress in enacting 43 U.S.C. 666. In considering S. 18, one of the final precursor bills to 43 U.S.C. 666, the Senate Judiciary Committee quoted from this Court in Pacific Live Stock Co. v. Oregon Water Board, 241 U.S. 440, 447 (1916), to describe state water adjudicatory laws in part as follows: . . . All claimants are required to appear and prove their claims; no one can refuse with-

make provision for court-appointed referees to make initial investigations, the referee may simply refer the applications and the oppositions to the District Court for its disposition. In any event, any ruling by a referee is subject to judicial review in a formal hearing by the court[15] and the final ruling is embodied in a judgment and decree subject to appellate review.[16]

The brief of the United States goes no further in its reference to the procedures of the 1969 Act than mention of the referee (Br. 13) and thus ignores the full reach of the proceedings. The involvement of and supervision by the court every step of the way in making determinations of water rights of all claimants is readily apparent.[17] The proceeding before the re-

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out forfeiting his claim . . ." See S. Rep. No. 755, 82d Cong., 1st Sess. 5 (1951). The Committee report also notes (at 3-4) this Court's decision in California-Oregon Power Co. v. Beaver Portland Cement Co., 295 U.S. 142 (1935). That case construes the Desert Land Act of 1877 and earlier Acts, as they relate to water, and describes the growth of appropriation law. It also discusses the Oregon Water Code and notes (at 153): "the procedural provisions of [that] act have been sustained as constitutional by this court," citing the Pacific Live Stock case, *supra*. For a discussion of S. 18 and related measures see our brief in No. 87, 14-29.

[15] Colo. Rev. Stat. § 148-21-20 (3).

[16] Colo. Rev. Stat. § 148-21-20 (9).

[17] The contention of the United States that this is not a general adjudication (Br. 11) is wide of the mark. As this Court noted in Dugan v. Rank, 372 U.S. 609, 618-19 (1963), 43 U.S.C. 666 was not applicable in a private suit to determine water rights but was intended to apply (quoting from the report of the Senate Judiciary Committee in S. Rep. No. 755, 82d Cong., 1st Sess. 9 (1951)), to an adjudication of "all of the rights of various owners on a given stream". In Pacific Live Stock Co. v. Oregon Water Board, *supra*, this Court recognized substantially the same distinction well before 43 U.S.C. 666 was enacted in refusing to

spondent court, now before this Court, is thus clearly a suit for the adjudication of water rights within 43 U.S.C. 666.

As rights are decreed under the 1969 Act they are to be tabulated with previously decreed rights, resulting in the integration and consolidation into priority lists of all appropriations of water from the same source.[18] The United States concedes that 43 U.S.C. 666 requires its presence in this process for at least part of its rights and advised the respondent court that the Government was "gathering a catalog of its multitude of water rights within Water Division 5", but despite this seeks to be excused by this Court from the entire process as to all of its rights. This is not only contrary to the plain meaning of 43 U.S.C. 666 but contrary as well to the result sought to be achieved by such legislation, where in the making of the legislative history all of the arguments made here by the United States were considered and rejected.

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enjoin a proceeding before the Oregon Water Board because of pending suits between private parties over water rights, holding:

> . . . They are merely private suits brought to restrain alleged encroachments upon the plaintiff's water right, and . . . do not require any other or further determination respecting those waters. Unlike them, the proceeding in question is a quasi public proceeding, set in motion by a public agency of the state. All claimants are required to appear and prove their claims; no one can refuse without forfeiting his claim, and all have the same relation to the proceeding . . .

As we indicate in n. 14, *supra*, Congress was fully conversant with this case in enacting 43 U.S.C. 666.

[18] Colo. Rev. Stat. §§ 148-21-27 to 28.

CONCLUSION

This case and No. 87 present the identical question of state court jurisdiction resolved in favor of such jurisdiction by the Colorado Supreme Court. The doubts and speculations by the United States as to what *might* happen under the 1969 Act if it articulates its claims, add nothing to this basic question. Jurisdiction to consider all claims of the United States to the use of water was granted in 43 U.S.C. 666 as a matter of fairness and for the very practical reasons that there would be no certainty in water rights adjudications where the United States, if an owner or claimant, remained absent, and all such claims could be quantified under the long-developed adjudicatory systems of the appropriation states. The court below should thus be affirmed.

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